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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the matter of)
)
Provision of Directory Listing)
Listing Information under the)
Telecommunications Act 1934, as amended)
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CC Docket No. 99-273

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FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

Comments of the Yellow Pages Publishers Association

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Summary of the Comments of the Yellow Pages Publishers Association

The Commission should not mix apples and oranges. Directory publishing and directory assistance are distinct services and should remain that way. Congress clearly segmented the services, and the Commission should not attempt to mingle them.

Directory publishing is an open, competitive and generally unregulated business. Nothing in the Telecommunications Act of 1996 permits the FCC to change that.

Table of Contents

	<u>Page</u>
I. Oral Publication	1
II. Distinction between Directory Publishing and Directory Assistance	3
III. Conclusion	5

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To: The Commission

Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA") by its attorneys, hereby submits Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. YPPA is the largest trade association of Yellow Pages publishers in North America, representing members engaged in all aspects of the directory business. YPPA addresses its comments to the questions raised in the NPRM affecting the directory publishing business.

I. Oral Publication

The NPRM asks whether "oral publication" of listings should be considered publishing a directory in any format for purposes of section 222(e)^{1/}. The answer to that question is a resounding no.

^{1/} NPRM at para. 180.

A conclusion that Congress intended "oral publication" to be covered under section 222(e) is not supported by the legislative history. Nowhere in the discussion of section 222(e) does the word "oral" appear. Oral transmission of directory information is usually associated with directory assistance. Congress specifically delineates responsibilities of incumbent local exchange carriers with respect to directory assistance in Section 251(b)(3). Directory assistance is not mentioned, however, in section 222(e) or the legislative history associated with that section.

It is a well-settled statutory interpretation principle that, within the same statute adopted or amended in the same piece of legislation, the use of a word in one provision and the omission of that word in another provision is intentional, and therefore imparts a different meaning to the two sections. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."^{2/} "It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another."^{3/}

The House Committee Report, the most extensive Congressional explanation of section 222(e), mentions publishers of telephone directories, but not directory assistance: "[T]his provision is intended to ensure that persons who use subscriber information,

^{2/} Moshe Gozolon-Peretz v. United States, 498 U.S. 395, 404; 11 S. Ct. 840, 846-47; 112 L. Ed. 2d 919 (1991).

^{3/} City of Chicago v. Environmental Defense Fund, 511 U.S. 328, 338; 114 S. Ct. 1588, 1593; 128 L. Ed. 2d 302 (1994).

including publishers of telephone directories..."^{4/} The report also states "[S]ection 222 ensures that independent directory publishers have access to subscriber listing information..."^{5/} It is clear that Congress intended section 222(e) to apply to those persons publishing directories, whether that directory is a paper directory, a CD-ROM, or other medium. Congress was concerned about telephone directory publishers, and not providers of directory assistance when Congress enacted section 222(e). Otherwise, the words "oral publication" or "directory assistance" would appear somewhere in the legislative history.

II. Distinction between Directory Publishing and Directory Assistance

The NPRM asks whether directory publishing and directory assistance are mutually exclusive categories.^{6/} The answer to that is yes.

As noted above, Congress chose to distinguish between the two categories. Also, there is a difference in the way the information is accessed and the regulatory treatment of each activity.

Directory assistance cannot be accessed without use of the telephone network. You need a telephone and must dial specific digits (e.g. 411, 555-1212, or 10-10-9000) to obtain directory assistance. Presumably, a company that operates the telephone network has the ability to manage access to the directory assistance provided over that network.

^{4/} H.R. Rpt. No. 104-204, Part I, 104th Cong., 1st Sess. at p. 89 (1995).

^{5/} Id.

^{6/} NPRM at para. 179.

On the other hand, one does not need to use the telephone network to access a published telephone directory. Anyone can publish a directory and access to the directory is not limited in any way by the regulated telephone network. Also, directory publishing has been a competitive business for decades, while directory assistance is just now becoming a competitive service.^{7/} That is why there is a very different regulatory history between directory assistance and directory publishing. The Commission should not ignore that history.

Directory assistance and directory publishing are treated as legally distinct services under the Act and under the current regulatory scheme. Attempting to collapse the inherent distinctions between the two services is neither supported by the Act or by sound public policy. The Commission should not attempt to force the convergence of these services through regulatory fiat. The Commission should not confuse any similarities between the services as an invitation to regulate directory publishers.^{8/}

Directory publishing is an open, competitive and generally unregulated business. Nothing in the Telecommunications Act of 1996 permits the FCC to change that.


^{7/} YPPA agrees with the premise that services that are competitive should not be regulated.

^{8/} YPPA notes that neither section 222(e) nor any other provision of the Communications Act of 1934, as amended, gives the FCC any jurisdiction, ancillary or otherwise, over directory publishers, regardless of whether the publisher is affiliated with a telecommunications carrier.

III. Conclusion

The Commission should not mix apples and oranges. Directory publishing and directory assistance are distinct services and should remain that way. Congress clearly segmented the services, and the Commission should not attempt to mingle them.

Respectfully submitted,



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